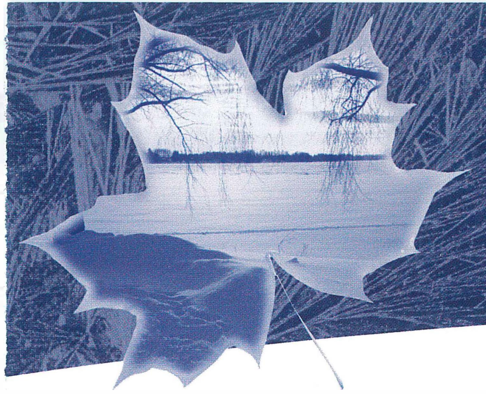

WDC Connection

Wisconsin Deferred Compensation (WDC) Program

Fiduciary Education Can Keep You Out of Trouble

The growing number of lawsuits and changing regulations about deferred compensation means that for employers and other plan administrators, it's more important than ever to understand what fiduciary responsibility is all about.

Who is a fiduciary? A person acts in a fiduciary capacity when he or she handles money or property for the benefit of another. With the Wisconsin Deferred Compensation (WDC) Program, the plan sponsor is handling money for the benefit of plan participants. Fiduciary responsibility arises every time the plan sponsor, or certain designated employees, are making decisions that impact the plan and plan assets.

Failure to fulfill fiduciary obligations can result in severe penalties, including personal liability.

"Some have asked why they are the fiduciary when the money in the plan doesn't belong to them," says Marilyn R. Collister of Empower Retirement, the company that administers the WDC. "This question gets right at the heart of what constitutes fiduciary capacity and when it attaches to an individual."

Employers sponsoring their own deferred compensation plans are always plan fiduciaries. Even for those who aren't employers, they may be plan fiduciaries if their duties include:

- implementing plan decisions made by the employer.
- establishing policies and procedures for the plan.
- administering and/or operating the plan.
- keeping plan documents updated to reflect current law.
- selecting and monitoring the plan's investment options.
- engaging service providers, consultants and others to assist with the plan.

In short, fiduciary status is based on the functions performed, not a person's title. Therefore, it is vital to determine who a plan's fiduciaries are. Collister says it's wise to make a list of all employees who work on the plan in any capacity, along with any third parties such as trustees, accountants, attorneys or advisors.

"Executives or employees who don't know they are fiduciaries or are not aware of their basic fiduciary responsibilities may inadvertently breach their fiduciary duties," she says. "Knowing you are a plan fiduciary and what is required of you will keep you and your plan out of trouble."

If someone in my office prepares a form or emails someone about the plan, are they a fiduciary? Not necessarily. Fiduciaries are usually those making more complex, discretionary decisions regarding plan provisions and assets, and they must adhere to a specific code of conduct.

Rules of the road for fiduciary conduct center on loyalty, prudence, diversification, monitoring and compliance. They include:

- Avoiding conflicts of interest. This is what the fiduciary code means by "loyalty." Plan fiduciaries must act in the best interests of the plan participants and for the exclusive purpose of providing plan benefits – at all times.
- Use of good judgment. The "prudence" component of fiduciary responsibility requires the use of care, skill, sound processes and diligence on the part of a knowledgeable person.
- Investment decisions. This involves creating an investment policy statement (IPS) that defines your criteria and processes for investment decisions and methodology for selecting a broad, diversified array of investments with varying levels of risk and returns.

PSC: One-Stop WDC Management

The Plan Service Center (PSC) makes managing the WDC easier than ever. By logging onto PSC, you can:

- Process employee payroll contributions
- Download deferral reports
- Construct customized reports
- Access the most current participant forms
- Find information about WDC features and services

You can also get the latest information on employee contribution changes directly from the WDC. By using PSC, you can ensure that employee deferral files are accurate and up to date.

REMINDER: It is in your best interest, and that of your employees, to send contributions in every payroll to ensure they are invested properly.

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Fiduciary Education (continued)

- Document management. Fiduciary rules state that plan documents must comply with Internal Revenue Code and regulations. Failure to comply with plan governing documents is a top IRS audit focus and may cause a plan to become ineligible.
- Participant education. Develop easy-to-understand communications to inform employees about key plan features and how participating in the plan would benefit them. Participant communications and education are a large part of a fiduciary's responsibilities and can limit liability.

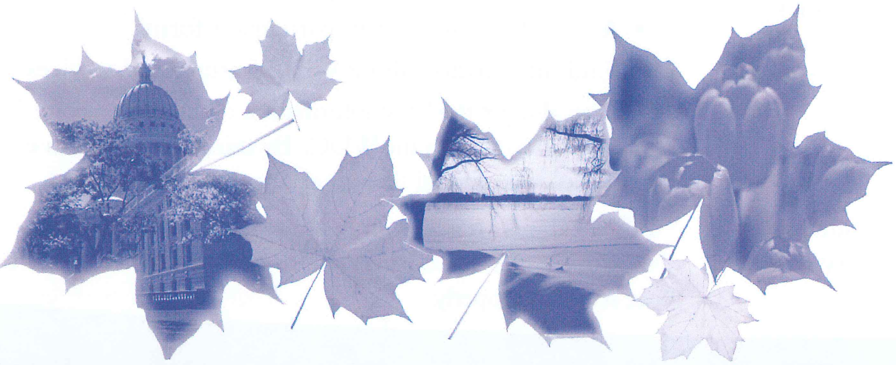
"If you are maintaining your own plan, the ultimate responsibility for plan operation cannot be outsourced or relinquished," Collister said. "For the WDC, which acts as the fiduciary for employers who adopt the plan, the key is being knowledgeable and acting sensibly when making decisions on behalf of the plan and its participants."

The Roth Option: More Flexibility for WDC Contributions

The WDC accepts Roth 457 contributions, giving your employees the flexibility to designate all or a portion of their WDC elective deferrals as Roth contributions.

As you know, Roth contributions are made with after-tax dollars, as opposed to the before-tax dollars traditionally contributed to the WDC. In other words, with the Roth option, employees already paid taxes on the money they contributed. With before-tax deferrals, taxes are paid when a distribution is taken.

Why should your employees consider Roth contributions? For some, it might make sense to pay taxes on WDC account contributions now, rather than when money is withdrawn during retirement. If an employee expects their income or taxes to rise substantially over time, they may be taxed at a lower rate today than in the future – even during retirement. These factors might make Roth contributions a good option, even for those who are younger or currently in a relatively low tax bracket.



Employees who expect to have relatively higher WDC account investment earnings or may have a higher amount of money set aside for retirement may benefit from paying taxes up front or just having a pool of tax-free money down the road. Tax planning can be complex, so it's always a good idea to recommend consulting a qualified advisor. In the meantime, here's what your employees need to know about WDC Roth contributions:

- Restrictions. Roth 457(b) contributions can either replace or complement traditional pre-tax contributions, subject to IRS limits. In 2016, employees under age 50 can contribute a total of $18,000. For example, if $9,500 is earned in pre-tax plan account contributions, participants can also make up to $8,500 in Roth 457(b) after-tax contributions.
- Catch-Up Contributions. Participants can make catch-up contributions as long as they don't exceed the $6,000 for the Age 50+ Catch-Up limit or $36,000 for the Special or Three-Year Catch-Up provision in a calendar year as a combination of Roth and pre-tax savings.
- Timeframe. Roth contributions have a five-year rule, meaning participants may only withdraw Roth 457(b) contributions and earnings tax-free if those savings are held in the plan for at least five consecutive years, among other requirements.
- Withdrawals and Distributions. Participants may take a withdrawal from Roth accounts while still working if their situation meets IRS and WDC hardship requirements. Otherwise, they can start taking tax-free distributions at age 59½.[1] At age 70½, participants may take tax-free distributions even if they are still working (provided that they have contributed to the Roth for at least five years). Funds withdrawn earlier are at risk of being taxed like regular income.
- Rollovers. Roth IRAs may be rolled into other Roth IRAs, but not into the WDC. If participants change jobs, Roth funds may be rolled over into a qualified account.[2] Similarly, they may roll over a former employer's 401(k), 403(b) or 401(a) plan, a traditional IRA or another governmental 457 plan into the WDC.[3]

What Your Employees Need to Know: Understanding WDC Employer Contributions

While the WDC is a supplemental retirement savings program available to all active state, local and university employees, your entity may or may not offer matching contributions to its employees. The guidelines, under Wisconsin law, offer some clarification regarding matching retirement funds.

The law states that employers may choose to match employee contributions, but they don't have to – unless they are bound by a collective bargaining agreement to do so.

For those employers that do match employee contributions to the plan, those matching funds become the employee's contributions as soon as the match is made. In addition, any employer contributions apply toward the maximum deferral limits in the plan.

Regardless of whether your employees receive matching contributions, the WDC is a great way to have an opportunity to earn compound interest on a tax-deferred basis toward their retirement.

Upcoming Webinars: Employer Contributions and Roth 457s

Employer Contributions

May 18 – 11:30 a.m.

Although active state and university employees have access to the supplemental program, keep in mind your entity may not offer matching contributions. Marilyn Collister of Empower Retirement (the WDC's administrator), will offer insights and clarification regarding WDC matching retirement funds, and how they should be implemented according to Wisconsin law.

Roth 457s

May 18 – 12:30 p.m.

The Wisconsin Deferred Compensation (WDC) Program accepts Roth 457 contributions, giving your employees the flexibility to designate all or a portion of WDC elective deferrals as Roth contributions.

But what are the benefits of Roth contributions? Are they right for your employees? Learn about tax advantages and other Roth highlights during an upcoming webinar with Marilyn Collister of Empower Retirement (the WDC's administrator). Collister will explain Roth 457s and answer your questions.

Visit **www.wdc457.org** for more information about the WDC webinars.

About Marilyn Collister

Marilyn Collister is an employee benefits attorney with Empower Retirement and specializes in employee-sponsored deferred compensation plans. Her areas of expertise include the unique rules applicable to governmental and church plans and tax-sheltered annuities. Collister is co-editor of *Focus on 457*, a leading technical newsletter for governmental defined contribution plans that has been published since 1987. She is a member of, and serves on, the legislative committee of the National Association of Government Defined Contribution Administrators, Inc. (NAGDCA). Collister has also served as a member of the Government Relations Committee and as chairwoman of the 403(b) Task Force of the Society of Professional Asset Managers and Recordkeepers (SPARK).

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⬜ **NORTHEAST**
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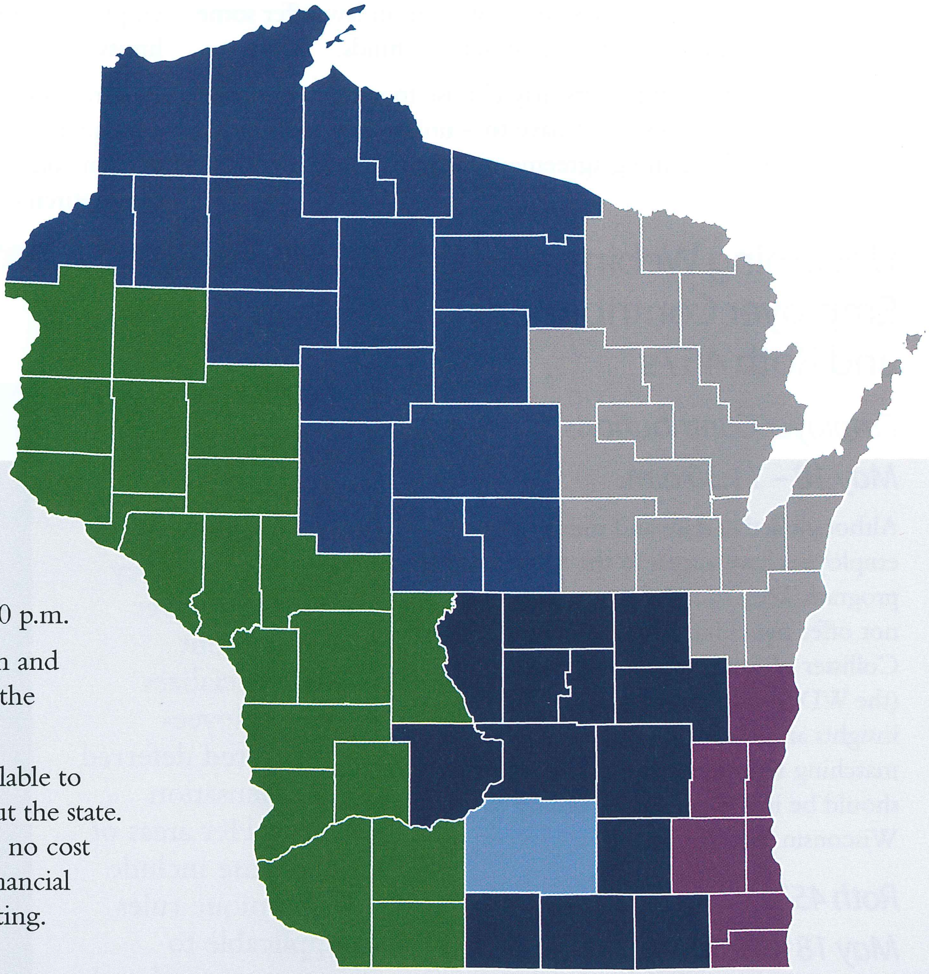
Joseph Herron



Help Is Available

The WDC Program has a fully staffed office in Madison, open weekdays from 8:00 a.m. to 4:30 p.m.

Employees can access their account information and make changes 24/7 on the website or through the interactive voice response system.[4]

Seven local, salaried representatives are also available to meet with employers and employees throughout the state. One-on-one or group meetings are available at no cost to you or employees to help with topics like financial education, enrolling in the program and budgeting.

WDC Contact Information

5325 Wall St., Suite 2755
Madison, WI 53718

Phone: (608) 241-6604[4] | Toll-Free: (877) 457-9327[4] | Fax: (608) 241-6045

Email: wdcprogram@empower-retirement.com | Website: www.wdc457.org[4]

[1] Withdrawals may be subject to ordinary income tax. The 10% federal early withdrawal penalty does not apply to 457 plan withdrawals except for withdrawals attributable to rollovers from another type of plan or account.

[2] If you roll over any governmental 457 dollars to another type of plan or account, the withdrawals made prior to age 59½ may be subject to a 10% federal early withdrawal penalty upon distribution from the non-457 account.

[3] Money from other types of plans or accounts that are rolled over into a governmental 457 plan may still be subject to the 10% federal early withdrawal penalty prior to age 59½ upon distribution from the 457 account.

[4] Access to the voice response system and/or any website may be limited or unavailable during periods of peak demand, market volatility, systems upgrades/maintenance or other reasons.

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